

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2517

Introduced by Assembly Member Eng

February 24, 2012

An act to add Chapter 3 (commencing with Section 3000) to Title 14 of Part 4 of Division 3 of the Civil Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2517, as amended, Eng. Employment: payment of wages: liens.

Existing law provides that specified persons, including laborers, as defined, who contribute labor, skill, or services to a work of improvement, shall have a mechanic's lien upon the property so improved.

~~This bill would declare the intent of the Legislature to enact legislation that would allow employees and workers to record a lien on the real or personal property of their employer if that employer refuses to pay their wages.~~

This bill would authorize an employee to record and enforce a wage lien upon specified real and personal property for wages and related penalties and damages owed the employee. The bill would prescribe requirements relating to the recording and enforcement of the wage lien.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3 (commencing with Section 3000) is added to Title 14 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3. WAGE LIENS

3000. (a) If all of the requirements of this chapter are met, an employee has a lien for the amount of wages and related penalties and damages owed the employee by his or her employer on all of the following:

(1) Real and personal property owned by the employer that is located within the state.

(2) Real and personal property that is located within the state upon which the employee performed work or for which the employee furnished materials, as part of the employee's employment, at the request of the owner or a person acting under the owner's authority. A lien as to the property described in this paragraph may attach only for the time that the employee performed work on or furnished materials for that property.

(b) (1) To establish the lien described in subdivision (a) upon real property, the employee, employee representative, or the Labor Commissioner shall record a notice of lien with the county recorder in the county where the real property is located.

(2) The notice of lien shall include all of the following:

(A) A statement of the claimant's demand after deducting all just credits and offsets.

(B) The name of the owner or reputed owner, if known.

(C) A general statement of the kind of work furnished by the claimant.

(D) The name of the person by whom the claimant was employed or to whom the claimant furnished work.

(E) A description of the site sufficient for identification.

(F) The claimant's address.

(3) The employee, employee representative, or the Labor Commissioner shall serve the notice of lien on the real property owner, as follows:

(A) For an owner or reputed owner to be notified who resides in or outside this state, by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage

1 *prepaid, addressed to the owner or reputed owner at the owner's*
2 *or reputed owner's residence or place of business address.*

3 *(B) If the owner or reputed owner cannot be served by this*
4 *method, the notice may be given by registered mail, certified mail,*
5 *or first-class mail, evidenced by a certificate of mailing, postage*
6 *prepaid, addressed to the construction lender or to the original*
7 *contractor, if applicable.*

8 *(c) (1) To establish the lien described in subdivision (a) upon*
9 *personal property, the employee, employee representative, or the*
10 *Labor Commissioner shall record a notice of lien with the*
11 *Secretary of State. The notice shall specify the nature and amount*
12 *of the wage claim, describe the property on which the lien is made,*
13 *and state that a lien is claimed on the property. Except as otherwise*
14 *provided in this chapter, the manner, form, and place of filing*
15 *shall be as described in Chapter 5 (commencing with Section 9501)*
16 *of Division 9 of the Commercial Code. The notice of the lien shall*
17 *be placed in the same file as financing statements pursuant to*
18 *Section 9522 of the Commercial Code.*

19 *(2) The employee, employee representative, or the Labor*
20 *Commissioner shall serve a copy of the notice by personal service*
21 *to the owner in the same manner as a summons or by mail as*
22 *described in paragraph (3) of subdivision (b).*

23 *(d) (1) If treble damages are owed pursuant to subdivision (b)*
24 *of Section 206 of the Labor Code, the Labor Commissioner shall*
25 *record a lien for those damages, which will be separate and apart*
26 *from any other lien under this section.*

27 *(2) Failure to record or perfect a lien for damages under*
28 *subdivision (b) of Section 206 of the Labor Code shall have no*
29 *effect on the enforceability or perfection of any other lien under*
30 *this section.*

31 *(e) A lien under this section is perfected when the lien is*
32 *recorded and noticed as described in this section.*

33 *(f) A lien may be filed pursuant to this section at any time before*
34 *the expiration of the statute of limitations for the wage claim the*
35 *lien would enforce.*

36 *(g) Mistakes or errors in the claimed amount owed that the lien*
37 *would enforce do not invalidate the lien unless made with the intent*
38 *to defraud.*

39 *3001. (a) An action to enforce a lien under this chapter may*
40 *be brought by the employee, employee representative, or the Labor*

1 Commissioner, and may be included in any action brought under
2 Chapter 5 (commencing with Section 17200) of Part 2 of Division
3 7 of the Business and Professions Code, any action brought by
4 collective bargaining representatives, or any class action or
5 representative action.

6 (b) If the action is brought in an administrative proceeding
7 before the Labor Commissioner pursuant to Section 98 of the
8 Labor Code, the Labor Commissioner shall determine the validity
9 of the lien. If no lien has been recorded at the time the
10 administrative claim is filed, the Labor Commissioner shall record
11 and notice a lien pursuant to Section 3000 on behalf of the
12 employee.

13 (c) Actions pursuant to this chapter against the same employer
14 may be joined in a single proceeding, but the court may order
15 separate trials or hearings.

16 3002. (a) If a lien is recorded pursuant to Section 3000 and
17 an action to recover wages and related penalties and damages
18 owed the employee has already been filed, that action shall also
19 be deemed an action to enforce the lien upon any property subject
20 to the recorded lien. In the judgment resulting from the action, the
21 court may order the sale at a public auction, or the transfer to the
22 plaintiff of title or possession, of any property subject to the lien.
23 Regardless of whether the order is made part of the judgment, a
24 writ of sale may be issued for any property subject to the lien at
25 any point after a judgment for unpaid wages is issued.

26 (b) If judgment is entered in favor of the employer in an action
27 to recover wages and related penalties and damages owed the
28 employee or if the case is dismissed with prejudice, any applicable
29 lien shall be extinguished upon expiration of the appeals period
30 if no appeal is filed. If an appeal is filed, the lien shall continue
31 in force until all issues on appeal have been decided. If the lien is
32 extinguished, upon demand and 15 days' notice by any affected
33 party, the employee, employee representative, or Labor
34 Commissioner shall file a release of the lien in the manner
35 prescribed by Sections 697.370 and 697.650 of the Code of Civil
36 Procedure.

37 (c) To enforce the lien, an action shall be brought within one
38 year of the recording of the lien. If an action to enforce the lien is
39 not brought within one year of the recording of the lien, the lien
40 shall be extinguished. Upon demand and 15 days' notice by any

1 *affected party, the employee, employee representative, or Labor*
2 *Commissioner shall file a release of the lien in the manner*
3 *prescribed by Sections 697.370 and 697.650 of the Code of Civil*
4 *Procedure.*

5 *3003. A lien established pursuant to this chapter takes*
6 *precedence over all other debts, judgments, decrees, liens, or*
7 *mortgages perfected on or after January 1, 2013, except a tax lien,*
8 *against the employer, regardless as to whether the debts,*
9 *judgments, decrees, liens, or mortgages originated before or after*
10 *the wage lien or were perfected prior to the wage lien. An*
11 *employee's lien is effective against the employer, the estate of the*
12 *employer, or a subsequent bona fide purchaser of the property*
13 *subject to the employee's lien.*

14 *3004. The employee, employee representative, or Labor*
15 *Commissioner may recover court costs and reasonable attorney's*
16 *fees in a successful action to enforce a lien brought pursuant to*
17 *this chapter.*

18 ~~SECTION 1. It is the intent of the Legislature to enact~~
19 ~~legislation that would allow employees and workers to record a~~
20 ~~lien on the real or personal property of their employer if that~~
21 ~~employer refuses to pay their wages.~~